

Senator McCain's Statement
Hearing on Advertising Limits in the Tobacco Settlement
March 3, 1998

This hearing is one in a series of hearings to examine the proposed global settlement of tobacco litigation. The purpose of the hearing is to explore those portions of the proposed settlement that would restrict the advertising, marketing, and sale of tobacco products. In this hearing we will receive testimony on the importance of those limitations and on the potential role of the Federal Trade Commission. We will also examine the constitutional issues that surround the limitations.

As we all know, the proposed settlement is built around a central premise: the tobacco companies would receive certain limitations of liability in exchange for payments numbering in the hundreds of billions of dollars and the imposition of various limitations on the advertising, marketing and sale of tobacco products. This trade-off would provide a stream of revenue which could be put to a number of uses, including the funding of health research, counter advertising campaigns, smoking cessation programs, and the compensation of those injured through the use of tobacco products.

When it comes to the advertising and marketing limitations, many suggest the First Amendment significantly limits what can be imposed on the tobacco companies without their consent. They suggest that one can only achieve the full range of advertising and marketing restrictions through consent of the tobacco companies. Most suggest some restrictions may be possible without consent but those restrictions would be more limited in nature.

A few suggest that the First Amendment imposes very few restrictions and one could enact advertising and marketing restrictions without the consent of the tobacco companies.

Obviously, we must evaluate these arguments carefully. First, we must determine the need for advertising and marketing restrictions to achieve our core purpose; reducing the smoking rates of America's young people. Then we must evaluate what bounds the Constitution imposes. Personally, I think little will be achieved if we pass legislation that will be held up for years in the courts and then struck down. Given how many children start smoking every day, we must know we are on solid footing when we act.

I look forward to a critical analysis of the many questions posed by tobacco legislation. I thank the witnesses for coming to this hearing. I look forward to your testimony and to the discussion that follows.